

Article - Health - General

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§15–120.

(a) If a Program recipient has a cause of action against a person, the Department shall be subrogated to that cause of action to the extent of any payments made by the Department on behalf of the Program recipient that result from the occurrence that gave rise to the cause of action.

(b) (1) An attorney representing a Program recipient in a cause of action to which the Department has a right of subrogation shall notify the Department prior to filing a claim, commencing an action, or negotiating a settlement.

(2) The attorney shall notify the Department in advance of the resolution of a cause of action and shall allow the Department 3 business days from the receipt of the notice to establish its subrogated interest.

(3) This subsection may not be construed to create a cause of action for notifying or failing to notify the Department.

(c) (1) Any Program recipient or attorney, guardian, or personal representative of a Program recipient who receives money in settlement of or under a judgment or award in a cause of action in which the Department has a subrogation claim shall, after receiving written notice of the subrogation claim, hold that money, for the benefit of the Department, to the extent required for the subrogation claim, after deducting applicable attorney's fees and litigation costs.

(2) A person who, after written notice of a subrogation claim and possible liability under this paragraph, disposes of the money, without the written approval of the Department, is liable to the Department for any amount that, because of the disposition, is not recoverable by the Department.

(3) The Department may compromise or settle and release its subrogation claim if, in its judgment, collection of the claim will cause substantial hardship:

(i) To the Program recipient; or

(ii) In a wrongful death action, to the surviving dependents of a deceased Program recipient.

(4) (i) The Department is not liable for payment of or contribution to any attorney's fees or litigation costs of any Program recipient or attorney, guardian, or personal representative of any Program recipient.

(ii) The deduction of applicable attorney's fees and litigation costs under paragraph (1) of this subsection may not be considered as payment for or contribution to those fees or costs by the Department.

(d) Any action brought under this section is not exclusive and is independent of and in addition to any right, remedy, or cause of action available to the State, the Department, any other State agency, or a Program recipient or any other individual.

(e) (1) (i) In this subsection the following words have the meanings indicated.

(ii) "Cigarette" means any roll of tobacco wrapped in:

1. Paper;
2. A substance not containing tobacco; or
3. A substance containing tobacco which because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be used by the consumers of ordinary paper-wrapped cigarettes.

(iii) 1. "Manufacturer of a tobacco product" means a designer, producer, or processor of a tobacco product engaged in the marketing or promotion of a tobacco product.

2. "Manufacturer of a tobacco product" includes an entity not otherwise a manufacturer of a tobacco product that imports a tobacco product or otherwise holds itself out as a manufacturer of a tobacco product.

3. "Manufacturer of a tobacco product" does not include:

- A. A grower, buyer, dealer, distributor, or wholesaler of leaf tobacco; or
- B. A retailer, distributor, or wholesaler of a tobacco product.

(iv) “Smokeless tobacco” means a product that consists of cut, ground, powdered, or leaf tobacco that is intended to be placed in the oral cavity.

(v) “Tobacco product” means cigarettes or smokeless tobacco.

(2) In any action under this section or pursuant to any other right, remedy, or cause of action brought by the State against a manufacturer of a tobacco product, the causation and the amount of medical assistance expenditures attributable to the use of a tobacco product may be proved or disproved by evidence of statistical analysis, without proof of the causation or the amount of expenditures for any particular Program recipient or any other individual.

(3) Nothing contained in paragraph (2) of this subsection prohibits or limits the right of any party to introduce any other evidence, otherwise admissible, that supports or rebuts the evidence of statistical analysis described in paragraph (2) of this subsection.

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